

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Patent Application

Inventors: Christopher Charles McCormick et al.

Serial No.: 09/668688

Conf. No.: 4264

Filing Date: 9/23/2000

Art Unit: 1797

Examiner: P. Kathryn Wright

Docket No.: 570-001US

Title: A Data Processing System For Providing An Efficient Market For
Specialty Chemicals

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REPLY BRIEF UNDER 37 CFR 41.41

Pursuant to 37 CFR 41.41, this brief is filed in response to a new ground of rejection issued by the Examiner.

Appellant's response to the Examiner's New Ground of Rejection

The Examiner rejected claim 40 under 35 USC §103 as being obvious over U.S. Pat. No. 6,882,980 to Schuller. Claim 40, and claims 36 and 31 upon which it depends, appear below:

40. (Previously Presented) The method of claim 36 wherein said requirement comprises a range of acceptable values for at least some of a plurality of characteristics that define said uniform standard, the method further comprising assigning a rank to at least one of said characteristics, wherein a value of said rank indicates a relative importance of satisfying said one characteristic in determining whether or not a batch satisfies said requirement.

36. (Previously Presented) The method of claim 31 further comprising:

compiling statistics in said data processing system, said statistics comprising information about purchases of said chemical facilitated by said data processing system; and
outputting said statistics to an interested party.

31. (Previously Presented) A method comprising:

outputting, from a data processing system, a uniform standard for a chemical, said uniform standard defined by a supplier-independent set of physical and chemical characteristics of said chemical;

receiving, at said data processing system, a requirement from a prospective purchaser for said chemical, wherein said requirement comprises an allowable range of values for at least some of said physical and chemical characteristics that define said uniform standard, and wherein said chemical is available for purchase via said data processing system; and

comparing, via said data processing system, said requirement to analyses of a plurality of batches of said chemical that are available for purchase through said data processing system, wherein each batch

that is available for purchase is analyzed by said testing facility.

In addition to discussing claim 40, base claim 31 upon which it depends will be addressed. In her rejection of claim 31, the Examiner alleged that:

- (1) *It is expected that, in order to do the comparison the products are compared using a uniform standard for an accurate determination between the two analyses. However, if not, it would have been obvious to one of ordinary skill in the art to provide a uniform standard for an accurate determination between the two analyses.*

The Examiner argues that appellant's specification provides no consistent definition for the phrase "uniform standard," and thereby broadly construes the term. In particular, the Examiner alleges that the appellant states that "uniform standard" is to be strictly construed to mean a "supplier-independent set of chemical characteristics or physical characteristics or both that are used to describe a chemical." The Examiner also alleges that the phrase "uniform standard" is also defined generally as "chemical and physical characteristics and testing methods for each specialty chemical being sold."

The Examiner is mischaracterizing appellant's specification. Appellant provides a single, clear definition for the phrase "uniform standard" at page 9, lines 22-24 of the specification. The reader knows this because, as done elsewhere in the specification, the appellant sets off the explicitly-defined phrase by "quotation marks," identifies the explicitly-defined term in **bold** font, and introduces the explicitly defined phrase by the words "As used in this disclosure, the term " xxx " is defined as ..."

This would seem to be a rather clear way to identify a term that is intended to be explicitly defined.

The language that supposedly provides a "general" definition of the term, which appears at p. 11, lines 6-7 of the specification, is reproduced below:

As described in more detail later in this specification, the requirement indicates, for a specialty chemical of interest, allowed ranges (from a prospective purchaser's point of view) for the measured values of the various chemical and physical characteristics that make up the uniform standard.

Notice, in this passage, the *absence* of the quotation marks, the *absence* of the bold

font, and the *absence* of introductory language that appellant routinely uses to provide an explicit definition.

The source of the alleged inconsistency would appear to be the fact that this passage recites "various chemical and physical characteristics" that make up the uniform standard." In other words, because this language doesn't say "and/or," we have, according to the Examiner, a new "general" definition that is inconsistent with the previously provided and clearly set forth explicit definition of the phrase "uniform standard."

Is the Examiner actually contending that there is some question as to what the phrase "uniform standard" is intended to mean? The reality is that a "uniform standard," as defined herein, for a specialty chemical will almost always include both chemical and physical characteristics. The explicit definition recites "chemical characteristics or physical characteristics or both" for breadth.

Appellant points out that since the explicit definition recites "or" as well as "and," there is nothing inconsistent with the use of the word "and" in the passage cited above, since "and" is a subset of the group "or" & "and."

Appellant's specification is quite clear about the importance of the "uniform standard" in conjunction with the claimed invention. The cited art, and indeed the specialty chemical industry as a whole, has been "silent" on this concept. To the inventors' knowledge, and they have been involved in the specialty chemical business for many years," the concept of a "uniform standard" has never been used in conjunction with the sale of specialty chemicals. There is no basis whatsoever, other than hindsight, to allege that this concept is "obvious" because it provides "for an accurate determination between the two analyses." Purchasers of specialty chemicals have been faced with comparing offerings from different suppliers for many years without the benefit of a "uniform standard."

2. The Examiner also alleged that Schuller teaches that a person enter a "requirement" into the data system, as recited in claim 40 (via claim 31). The Examiner alleges that Schuller's disclosure of "target characteristic information" about a product is equivalent to the term "requirement" as explicitly defined by appellant.

The term "requirement" is defined at p. 14, lines 3-6. As specified therein, the requirement can be a specified range for some or all of the characteristics in the uniform standard, referencing a specification stored in the specifications database (430,) referencing a requirement stored in the requirements database (434). In all of these instances, the requirement is defined, explicitly or implicitly, with respect to the uniform standard. That is, the "requirement" (allowed ranges of characteristics) does not overcome the problems of the prior art unless it is applied to a uniform standard. For example, if a prospective purchaser from Schuller were to input its "target characteristic information," but the ranges, etc. provided therein were based on different testing methodologies than were used to characterize the available products, then the intended "apples-to-apples" comparison provided by applicant's claimed invention would not be achieved. Since Schuller does not disclose or suggest the concept of a "uniform standard," Schuller cannot disclose or suggest the concept of a "requirement," as that term is used by appellant.

3. The Examiner also alleged that Schuller teaches comparing a requirement to analyses of batches of the specialty chemical that are available for purchase. The Examiner alleges that:

the Schuller can ship batches of existing raw materials (*i.e.*, existing batch of specialty chemicals) to the user. Also Schuller teaches a system where raw materials from different warehouses are shipped to a product blending and manufacturing site, wherein the completed product (existing batch) is then shipped to the user.... Thus, Schuller's system is for purchasing an "existing batch of speciality chemicals" (*e.g.*, raw materials) based on matching an analysis of the batch to the user's requirement.

Schuller discusses these scenarios at col. 4, lines 1-37. With regard the first scenario referenced above - shipping "batches of existing raw materials," this pertains to the discussion of the creation or modification of paint formulations. According to Schuller, the system can provide the paint manufacturer with formulations or "recipes" that include detail listings of raw materials and processing steps from which to formulate particular paint products. (col. 4, lines 14-17.)

At col. 4, lines 27-33, Schuller discloses that "[a]fter a recipe has been approved by a purchaser, the site **120** can complete order processing In some cases (*e.g.*, raw

materials purchases) the system can interact with other manufacturer and shipper systems to material shipments from warehouse(s) to the user.”

Schuller discloses that the recipe might call for a raw material having a certain fading characteristic, etc., (col. 4, lines 9-12). But there is no disclosure that the raw materials that are sent to the manufacturer were the actual batch that is the source of the information residing in the data base. In other words, the titanium dioxide raw material used as the basis for a formulation might have a certain fading characteristic. But if that particular batch is not available for shipment to the user, then there is no guarantee that the batch meets the user’s need. This, of course, is a main reason for appellant’s claimed invention – the inevitable batch-to-batch variation in specialty chemicals. And if Schuller’s system simply views the raw materials as commodities wherein a given analysis is suitable for all batches of the raw material, then the raw material is most definitely NOT analogous to a specialty chemical.

So regardless of whether or not Schuller’s raw materials are properly considered to be specialty chemicals, Schuller does not teach “comparing said requirement to analyses of a plurality of batches of said chemical that are available for purchase through said data processing system,” as per claim 40 (via claim 31).

The second scenario referenced by the Examiner pertained to the delivery of raw materials from different warehouses being shipped to a product blending and manufacturing site, wherein the completed product (existing batch) is then shipped to the user.

In this scenario, the Examiner analogizes the completed product to the applicant’s claimed batches of specialty chemicals. In the first place, this batch is NOT (pre) existing in the sense that the data processing system would not appear to have analyses of the batch. That is, the system ships the raw materials once the paint manufacturer decides on a recipe. As far as the reader can tell, the purchaser has purchased the raw materials (and hence the final product), before the product is even made at the blending/manufacturing site.

That batch is being specifically produced for a manufacturer – it is not an existing batch as are sold through appellant’s claimed system. Furthermore, there is no indication that the batch is even analyzed prior to shipping to the manufacturer to

determine if it meets the manufacturer's expectations. And even if analyses of the batch were performed, there is no disclosure that the analyses are reported back to the data processing system. (If the data processing system doesn't have an analysis of that batch, the system cannot perform the recited "comparing" operation.)

In view of the foregoing, it is asserted that Schuller does not teach or suggest comparing a "requirement" to analyses of batches of the specialty chemical that are "available for purchase."

4. The Examiner finds that claim 40 is obvious because "with respect to product ranking, again, this one of the advantages of using a database." The Examiner concludes that it would have been obvious to "list product analysis in an order from most desirable to least desirable given the specifications provided by the purchaser for easy viewing of the analysis."

Claim 40 recites, in pertinent part, "assigning a rank to at least one of said characteristics, wherein a value of said rank indicates a relative importance of satisfying said one characteristic in determining whether or not a batch satisfies said requirement."

This claim does not refer to *product* ranking, rather, it refers to ranking one or more *characteristics* as to a relevance importance to the prospective purchaser based on a likelihood that there might be no batches of specialty chemical that meet the purchaser's requirement. This effectively says, "ok, this batch is not within ranges specified in my "requirement" as to these few characteristics, but I don't consider those characteristics to be of critical importance. So this batch passes muster. "

Although not specifically recited in claim 40, it will be clear from reading the specification that the ranking is performed by the prospective purchaser, not the data processing system. Only the prospective purchaser knows what is acceptable in terms of a products analysis. The purpose of ranking, as specified in claim 40, is NOT to rank product analysis from most desirable to least desirable. The purpose of this ranking, rather, is to increase the likelihood that at least one batch meets the prospective purchaser's requirement for the specialty chemical.

Respectfully,
Christopher Charles McCormick

By **/Wayne S. Breyer/**
Wayne S. Breyer
Reg. No. 38089
Attorney for Appellants
732-578-0103 x212

DeMont & Breyer, L.L.C.
100 Commons Way
Suite 250
Holmdel, NJ 07733